

Message Text

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ACTION EUR-25

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C O N F I D E N T I A L BERLIN 0778

E.O. 11652: GDS

TAGS: PGOV WB GW GE

SUBJECT: BRUECKMANN CASE-- KAMMERGERICHT ASKS FOR ALLIED
INTERPRETATION

REF: A) BERLIN 715; B) STATE 81956

1. SUMMARY: KAMMERGERICHT HAS REQUESTED OFFICIAL ALLIED
DECLARATION ON EXTENT TO WHICH IT CAN TAKE ACCOUNT OF FEDERAL
CONSTITUTIONAL COURT'S DECISION IN RULING ON BRUECKMANN'S
APPLICATION FOR REHEARING OF KAMMERGERICHT'S EARLIER JUDGMENT
THAT SHE SHOULD BE RETURNED TO GDR. WHILE REQUESTED DOES NOT
SEEM TO ASK FOR MORE THAN ALLIES HAVE ALREADY GIVEN IN FORM
OF APRIL 29 LETTER TO SENATOR KORBER, KAMMERGERICHT, BY
ADHERING STRICTLY TO TERMS OF ALLIED LEGISLATION, APPEARS TO BE
SEEKING TO PUT RESPONSIBILITY SQUARELY UPON ALLIES FOR ITS
INABILITY TO BE FORTHCOMING TO GIRL'S APPEAL. BRITISH, TO
WHOM REQUEST WAS ADDRESSED, ARE PREPARING DRAFT ANSWER.
END SUMMARY.

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2. KAMMERGERICHT ANNOUNCED IN DECISION MADE PUBLIC

MAY 7 THAT IT REQUIRES DEFINITIVE INTERPRETATION OF ALLIED OBJECTIONS TO KARLSRUHE COURT'S JURISDICTION. GIRL'S LAWYER HAS ARGUED THAT CASE SHOULD BE REVIEWED BECAUSE MARCH 27 KARLSRUHE " ADVISORY OPINION" CONSTITUTES NEW ELEMENT ("TATSACHE") JUSTIFYING REHEARING WITHIN TERMS OF ARTICLE 9 OF LAW ON INNER-GERMAN LEGAL ASSISTANCE. KAMMERGERICHT CONCLUDES HEART OF ALLIED RESERVATION, WHICH KARLSRUHE SOUGHT TO TAKE INTO ACCOUNT, IS BK/O(52)35, IN WHICH ALLIES FORBADE ADOPTION IN BERLIN OF LAW ESTABLISHING JURISDICTION OF FEDERAL CONSTITUTIONAL COURT. IT NOTES THAT DESPITE THIS RESERVATION, KARLSRUHE RULED ON CONSTITUTIONALITY OF LAW UNDER WHICH BRUECKMANN WOULD BE RETURNED TO GDR, AND SET OUT STANDARDS BY WHICH BERLIN COURT SHOULD DETERMINE WHETHER LAW COULD BE APPLIED COSNTITUIONALLY TO BRUECKMANN CASE. KAMMERGERICHT SAYS THAT "IT APPEARS DOUBTFUL THAT THE DECISION OF THE FEDERAL CONSTITUTIONAL COURT IS COMPATIBLE" WITH BK/O (52)35 BUT ONLY ALLIES CAN MAKE DEFINITIVE INTERPRETATION WHETHER "MEANING AND OBJECTIVE" ("INHALT AND ZWECK") OF ALLIED RESERVATION CONCERNED NOT ONLY THE ADOPTION OF THE 1951 LAW ON JURISDICTION OF THE CONSTITUTIONAL COURT, BUT ALSO THE CREATION OF A MATCHING JURISDICTION THROUGH DECISIONS OF THE LEGALLY COMPETENT BERLIN AUTHORITY."

3. KAMMERGERICHT POINTS OUT THAT LOGICAL RESULT OF KARLSRUHE DECISION WOULD BE TO ESTABLISH INDIRECT KARLSRUHE COMPETENCE FOR BERLIN CASES. ONLY REAL DIFFERENCE BETWEEN BERLIN AND FRG SITUATION WOULD THEN BE THAT IN BERLIN KARLSRUHE WOULD SET FORTH GROUNDS FOR DECISION THAT WOULD THEN BE TAKEN BY BERLIN COURT WHILE IN FRG KARLSRUHE COULD VACATE LOWER COURT DECISION ON OWN AUTHORITY. THIS WOULD AJOUNT, KAMMERGERICHT SAID, ONLY TO "ROUNDAABOUT WAY TO SAME COMPETENCE" ("UMWEG DERSELBE RECHTSZUSTAND"). WHILE KAMMERGERICHT DECISION TAKES NOTE OF ALLIED LETTER OF APRIL 29 TO SENATOR KORBER, IT SAYS THAT SENAT IS NOT COMPETENT TO INTERPRET MEANING OF ALLIED LEGISLATION FOR COURTS. ARTICLE 3 OF ALLIED KOMMANDATURA LAW 7 REQUIRES THAT "WHENEVER ANY QUESTION AS TO THE EXISTENCE, TERMS, VALIDITY OR INTENT OF ANY ORDER OF THE OCCUPATION AUTHORITIES OR FORCES... MUST BE DECIDED, THE GERMAN AUTHORITIES CONCERNED SHALL FORTHWITH SUSPEND FURTHER ACTION AND REFER SUCH QUESTION TO THE APPROPRIATE SECTOR COMMANDANT. THE APPROPRIATE

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SECTOR COMMANDANT... MAY ISSUE A CERTIFICATE DETERMINING IT. SUCH CERTIFICATE SHALL BE BINDING ON THE GERMAN AUTHORITIES." KAMMERGERICHT HAS APPARENTLY CONCLUDED THAT BRITISH COMMANDANT IS APPROPRIATE ALLIED COMMANDANT TO ISSUE SUCH A CERTIFICATE, SINCE COURT IS LOCATED IN BRITISH S
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